

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

CHARLES HENDRICKSON, #1201043	§	
VS.	§	CIVIL ACTION NO. 2:05cv298
DIRECTOR, TDCJ-CID	§	

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Caroline M. Craven. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case.

Petitioner filed objections to the Report. Petitioner asserts that the time period should be equitably tolled because he did not receive notice until June 16, 2005, that his state application for writ of habeas corpus had been dismissed. Respondent submitted an affidavit stating that Petitioner received no legal mail from January 12 through June 10, 2005.

On November 18, 2005, a first Report and Recommendation, recommending dismissal, was issued in this case, but was vacated in order to allow Petitioner to submit proof that the Court should equitably toll the case. Petitioner did not submit adequate proof to justify equitable tolling.

This Court has made a *de novo* review of Petitioner's objections, the affidavit submitted by Respondent, Respondent's Supplemental Answer, and Petitioner's Reply to the Supplemental Answer. Petitioner has provided no evidence that he repeatedly attempted to ascertain the status of his case from the clerk's office. *See Drew v. Department of Corrections*, 297 F.3d 1278, 1288 (11th Cir. 2002), *cert. denied* 537 U.S. 1237 (2003). Petitioner has failed to show that extraordinary circumstances exist justifying equitable tolling of the limitations period. He has not established

entitlement to equitable tolling. Additionally, reasonable jurists could not debate the denial of Petitioner's petition on procedural grounds. *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

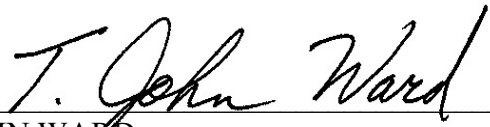
This Court finds that the Magistrate Judge's findings and conclusions in the second Report and Recommendation are correct, and adopts them as the Court's findings and conclusions. The Court therefore

**ORDERS, ADJUDGES, and DECREES** that this action is **DISMISSED WITH PREJUDICE**;

**ORDERS** that Petitioner is denied a certificate of appealability; and

**ORDERS** that all motions not previously ruled on are denied.

SIGNED this 21st day of March, 2007.

  
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T. JOHN WARD  
UNITED STATES DISTRICT JUDGE